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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Implementation of Sections 3(n) and 332 of )  
the Communications Act )

Regulatory Treatment of Mobile Services )

GN Docket No. 93-252

To: The Commission

**COMMENTS OF**  
**VANGUARD CELLULAR SYSTEMS, INC.**

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November 8, 1993

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## **SUMMARY**

As a leading provider of cellular service with systems in 18 MSAs and 4 RSAs covering more than 6.2 million people, Vanguard Cellular Systems, Inc. ("Vanguard") has a substantial interest in seeing that the Budget Act's mandate for regulatory parity in the mobile services industry is achieved.

To eliminate the regulatory inequities inherent in today's mobile communications marketplace, the Commission must broadly define and strictly apply the statutory elements of "commercial mobile services." Conversely, narrow interpretations of "for profit," "interconnected service" and other elements of this definition would only perpetuate today's inconsistent and anti-competitive regulatory framework and will encourage existing and future licensees to exploit definitional loopholes in the new regulatory scheme.

When the analysis required by the Budget Act is applied to existing mobile service providers, a number of services now considered to be private, such as wide-area, enhanced SMR and mobile data services, will be reclassified as commercial mobile services. In the case of new PCS services, Vanguard concurs with the Commission's assessment that PCS licensees will offer services that are similar to those provided by cellular companies. To guarantee, as the Budget Act requires, that there is a level playing field for cellular-PCS competition, Vanguard urges the Commission to classify PCS as a commercial mobile service, at least during the initial stages of PCS licensing. Vanguard believes the Commission's proposal to

classify some PCS services as commercial and others as private raises substantial practical problems and presents the potential for abuse. In view of these concerns, Vanguard urges the Commission to adopt, at least initially, a consistent regulatory regime for all PCS services. Regardless of how the Commission finally proceeds on this issue, it is essential to fair competition that the fundamental regulation of cellular carriers and PCS providers be the same. Thus, if the Commission decides to pursue a flexible approach for PCS regulation, then cellular carriers should enjoy the same flexibility.

The vigorous competition that exists in today's mobile communications marketplace, and the added competition that will soon result from the introduction of PCS services, guarantee that cellular carriers lack the market power to control prices or discriminate unreasonably in providing their services. In addition, superfluous regulatory requirements increase the cost of providing services and limit a carrier's flexibility in responding to customers' needs. For these reasons, Vanguard endorses exempting cellular carriers from the tariffing and other requirements set forth in Title II to the fullest extent permitted by the Budget Act.

Vanguard believes that the public interest would be served by promoting the interconnection of commercial mobile service networks, provided it is clear that licensees of new mobile services will not be permitted to utilize existing cellular networks as a substitute for the prompt construction and implementation of their own networks. Such a result not only would have a negative effect on existing

cellular service but also would undermine the introduction of new services. Vanguard also supports the Commission's proposal to grant commercial mobile service providers the same interconnection rights that apply to existing Part 22 licensees. Finally, Vanguard strongly urges the Commission to refrain from imposing any equal access rules either on existing independent cellular carriers or on future independent commercial mobile service providers.

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To: The Commission

**COMMENTS OF**  
**VANGUARD CELLULAR SYSTEMS, INC.**

Vanguard Cellular Systems, Inc. ("Vanguard"), by its attorneys, hereby submits these Comments on the Federal Communications Commission's (the "Commission") Notice of Proposed Rule Making regarding the regulatory treatment of mobile service providers under Sections 3(n) and 332 of the Communications Act of 1934, as amended (the "Communications Act").<sup>1/</sup>

I. BACKGROUND

An early provider of cellular service in MSA markets, Vanguard has become the largest independent operator of purely non-wireline cellular systems in the country. The company owns and operates cellular systems serving 18 MSAs and 4 RSAs and holds minority interests in more than 50 other cellular systems. Vanguard's cellular systems cover a geographic area containing more than 6.2 million

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<sup>1/</sup> Notice of Proposed Rule Making, In the Matter of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252 (FCC 93-454), adopted September 23, 1993, released October 8, 1993 (the "Notice").

people and provide service to more than 120,000 subscribers with approximately 110 cell sites.

Vanguard has been a public-owned company since 1988 and currently has a market capitalization of more than \$840 million. In 1992, Vanguard's revenues exceeded \$89 million, a 29% increase over 1991 revenues, and the company's revenues for 1993 are approximately 35% higher than last year's revenues and likely will exceed \$110 million for the entire year. Along with McCaw Cellular Communications, Inc. and Southwestern Bell Mobile Systems, Inc., Vanguard owns the Cellular One® service mark which is licensed to A Block cellular carriers throughout the nation.

II. THE FCC MUST SPECIFY AND STRICTLY APPLY A  
BROAD DEFINITION OF "COMMERCIAL MOBILE SERVICE"

Title VI, Section 6002(c) of the Omnibus Budget Reconciliation Act of 1993 (the "Budget Act") requires the Commission to regulate in the same manner companies that provide equivalent mobile services.<sup>2/</sup> The elimination of regulatory inequities inherent in today's mobile communications marketplace will help ensure fair competition among existing and future providers of these services which, in turn, will benefit consumers. However, the Commission will not achieve the regulatory parity contemplated by the Budget Act unless it broadly defines and strictly applies the statutory elements of "commercial mobile service." Vanguard is concerned that

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<sup>2/</sup> Pub. L. No. 103-66, Title VI, § 6002(c), 107 Stat. 312, 393 (1993).

narrow interpretations of "for profit," "interconnected service" and other elements of this definition will perpetuate the inconsistent and anti-competitive regulatory framework that exists today and will encourage existing and future licensees to seek a competitive advantage by exploiting definitional loopholes in the new regulatory scheme. Once it has established the new regulatory classifications, the Commission must continually scrutinize existing and proposed mobile services to ensure that the Budget Act's mandate for regulatory parity is achieved and maintained.

A. The Commission Must Carefully  
Scrutinize Ostensibly Non-Profit Services.

The first component of the definition of "commercial mobile service" is that the service must be "for profit."<sup>3/</sup> Vanguard concurs with the Commission's assessment that government and non-profit public safety services are not included within this definition. Vanguard also believes that licensees who operate mobile communications services entirely for their own internal communications needs should not be subject to common carrier regulation. However, certain existing private carrier licensees are permitted to offer excess system capacity to third-party users on a for-profit basis. To the extent such carriers profit from the sale of excess capacity, that service should be subject to the same regulatory requirements that are applicable to commercial mobile service providers.

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<sup>3/</sup> 47 U.S.C. § 332(d)(1).

Another situation warranting strict scrutiny involves shared-use systems such as those permitted under Section 90.179 of the Commission's Rules.<sup>4/</sup> In one type of arrangement permitted under this rule, licensees of a private land mobile system may elect to have one licensee or a third party manage the operation of the system on a for-profit basis. For example, several real estate companies in a metropolitan area may join together to operate a shared-use system to provide mobile communications services to their agents. One of the licensees or a third party is appointed to manage the construction and operation of the system for a profit. Since the licensees of such a system (other than the system manager) do not receive a profit, the system arguably does not fit within the statutory definition of "commercial mobile service." Unless the Commission specifies that such shared-use arrangements are providing mobile communications "for profit," companies providing a wide range of mobile communications services to a substantial portion of the public could seek to unfairly avoid common carrier regulation by entering into such "non-profit" cooperatives.

**B. The Commission Should Broadly Define "Interconnected Service".**

The second element of the definition of "commercial mobile service" requires that "interconnected service" must be available.<sup>5/</sup> Vanguard agrees that this element is satisfied in all cases where subscribers have the ability to directly control access to the public switched network. Thus, cellular and enhanced SMR services clearly meet

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<sup>4/</sup> 47 C.F.R. § 90.179 (1992).

<sup>5/</sup> 47 U.S.C. § 332(d)(1).

this test because customers of these services can directly send or receive messages to or from points on the network. However, Vanguard suggests that direct subscriber access to the PSTN should not be necessary to satisfy the "interconnected service" component of the statutory definition.

In this regard, Vanguard believes that the Commission's approach in International Satellite Systems provides the proper analysis for defining "interconnected service."<sup>6/</sup> In that case, the Commission adopted a broad interpretation of public switched network interconnection, including interconnection through a PBX, manual interconnection by a switchboard operator, or a circuit that terminates in a computer that can store and process data and later retransmit it over the PSTN.<sup>7/</sup> Under this approach, interconnected service exists in any case where the service provided to mobile subscribers includes the potential for sending messages to or receiving messages from the PSTN, regardless of the manner interconnection is achieved or whether it is direct or indirect, instantaneous or delayed.

Thus, a carrier that does not have a direct, physical interconnection to the public switched network, but instead offers subscriber access to the PSTN by connecting its system to a cellular MTSO, would satisfy the statutory definition of providing "interconnected service." In addition, this approach would also include

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<sup>6/</sup> Report and Order, Establishment of Satellite Systems Providing International Communications, 101 F.C.C.2d 1046 (1985); recon., Memorandum Opinion and Order, 61 R.R.2d 649 (1986); further recon., Memorandum Opinion and Order, 1 FCC Rcd 439 (1986).

<sup>7/</sup> Id., 101 F.C.C.2d at 1101.

"store-and-forward" services, such as paging services, regardless of the type of technology used by the service provider (e.g., direct transmitter access, store and forward relay systems or answering service intervention). The dispositive factor in this analysis is access to and from the public switched network, even though such access may not be direct or instantaneous.

C. Niche Services Available to a Substantial Portion of the Public Should be Classified as Commercial Mobile Services.

Another element of the definition of "commercial mobile service" requires that interconnected service be available "to the public or to such classes of eligible users as to be effectively available to a substantial portion of the public."<sup>8/</sup> The legislative history addressing this element and the goal of regulatory parity require that the Commission adopt a comprehensive approach to this requirement. Clearly, services that restrict user eligibility to broad and general classes, such as SMR and private carrier paging, impose no meaningful limit on service availability and thus are "effectively available to a substantial portion of the public."

However, many other services that include more restrictive eligibility requirements, such as services targeted to specific businesses or users, are likewise available to a substantial portion of the public. For example, although an enterprise that targets its services to taxi companies located in metropolitan areas would have a narrow class of subscribers, the numbers of potential users of such a system

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<sup>8/</sup> 47 U.S.C. § 332(d)(1).

(including drivers and their customers) would obviously be substantial. The usage potential of such a system would make the service an attractive business opportunity for other mobile communications companies. If the Commission were to classify such a service as a private mobile service, a substantial regulatory imbalance would exist and the Budget Act's goal of regulatory parity would be undermined. The Commission's treatment of services with eligibility restrictions should be sufficiently expansive to avoid such a result.

Vanguard also submits that system capacity should not be relevant in determining whether service is "effectively available to a substantial portion of the public." As the Commission notes, system capacity has not been a factor in determining the appropriate regulatory treatment of common carrier mobile services.<sup>9/</sup> For example, cellular service was developed and licensed in recognition of the severe capacity restraints of conventional mobile telephone or IMTS systems. Notwithstanding such capacity limitations, IMTS systems traditionally have been regulated as common carriers. Similarly, service area size should not be relevant to whether service is available to a "substantial portion of the public," particularly in cases where a licensee voluntarily elects to limit its service area to a portion of the area it is licensed to serve. For the purpose of defining "commercial mobile service," geographic limitations on service availability are irrelevant so long as the service is available to the public or a substantial portion of the public within that service area.

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<sup>9/</sup> Notice at ¶ 26.

D.     **The Reference to "Functional Equivalent" in the  
Definition of Private Mobile Service Was Intended to Expand  
the Types of Services Subject to Common Carrier Regulation.**

Vanguard submits that to achieve and maintain the level playing field contemplated by the Budget Act, Congress intended that the Commission not be constrained by application of the literal definition of commercial mobile service in Section 332(d)(1). Instead, Congress gave the Commission the flexibility to extend common carrier regulation to a broad range of services. Thus, services that may not literally satisfy all of the elements of the "commercial mobile service" definition may nevertheless be subject to common carrier regulation if such services are the "functional equivalence" of commercial mobile services.

The Conference Report confirms this intention in its discussion of the definition of "private mobile service":

Further, the definition of "private mobile service" is amended to make clear that the term includes neither a commercial mobile service nor the functional equivalent of a commercial mobile service, as specified by regulation by the Commission.<sup>10/</sup>

This approach is consistent with the Congressional mandate that all equivalent mobile services shall be subject to the same regulatory treatment. If true regulatory parity is to be achieved, then system functionality rather than literal application of definitional elements should determine whether services are subject to one regulatory scheme or another.

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<sup>10/</sup> H.R. Rep. No. 103-213, 103d Cong., 1st Sess. (1993), at 496 (emphasis added).

In analyzing functionality, the Commission should emphasize the nature of the service provided and customer perceptions rather than system design or other factors that may be transparent to users. For example, a future PCS licensee may elect to provide interconnected wireless PBX services to large business users throughout a metropolitan area. It is conceivable that such a service could be provided without frequency reuse or other capacity augmentation methods. Obviously, cellular carriers and SMR operators serving the same metropolitan area would be providing substantially similar services as those provided by the PCS licensee. The fact that the PBX system may not utilize capacity augmentation, while competing cellular and SMR services do, should not be dispositive of the proper regulatory treatment for such a service. Instead, the nature of the service and user perceptions are far more relevant to an assessment of functional equivalence and regulatory treatment. Since, from a user's perspective, interconnected PBX service would be "functionally equivalent" to services offered by cellular and SMR carriers, all three providers should be subject to the same regulation.

The flexibility afforded by an expanding rather than limiting interpretation of functional equivalence is even more important with respect to future services. Recent advances in mobile communications technologies have shown that today's services may be provided tomorrow through radically different technologies. An inflexible, literal approach will not solve the regulatory imbalance which the Budget Act seeks to correct, particularly in the case of future services. For these reasons, Vanguard urges

the Commission to adopt a broad, comprehensive approach in its task of defining the elements of "commercial mobile service."

### III. REGULATORY TREATMENT OF EXISTING MOBILE SERVICE PROVIDERS

Section 332(d) requires the Commission to examine the regulatory status of all existing mobile service providers based on the statutory definitions contained in the Budget Act. Existing services that meet the definition of "commercial mobile service" or are deemed to be functionally equivalent to a commercial mobile service will be subject to common carrier regulation. As discussed in Section II above, the Commission must take a broad view of the elements of "commercial mobile service" to remedy the unequal regulatory requirements that apply to the same or similar services. As the Commission recognizes, the new approach mandated by the Budget Act means that a number of services now considered to be private will be reclassified as commercial services.<sup>11/</sup>

#### A. Wide-Area, Enhanced SMR Services Should Be Subject to Regulation as Commercial Mobile Services.

Wide-area, enhanced SMR systems should be treated as commercial mobile services because they provide "interconnected service" to a "substantial portion of the public." Such SMR systems offer services that are comparable to services provided by Vanguard and other cellular companies. Accordingly, Vanguard agrees with the

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<sup>11/</sup> Notice at ¶ 23.

Commission's determination that enhanced SMR services should be regulated as commercial mobile services.<sup>12/</sup>

B. Mobile Data Services are the Functional Equivalent of Commercial Mobile Services.

RAM Mobile Data provides a wide-area data service that is not physically interconnected to the public switched network.<sup>13/</sup> While this service is available to a substantial portion of the public, lack of PSTN interconnection means that it does not satisfy the definition of a commercial mobile service. Vanguard believes, however, that the services provided by RAM Mobile Data and other providers of non-interconnected mobile data services are functionally equivalent to commercial mobile services and should be regulated accordingly.

Subscribers to the RAM Mobile Data service are able to receive or send electronic mail messages or other computer transmissions over portable devices while travelling in hundreds of metropolitan areas throughout the country. As of June 1993, RAM Mobile Data had 840 base stations in 210 metropolitan areas.<sup>14/</sup> The services provided by RAM Mobile Data and other mobile data companies are similar to mobile data services offered by cellular carriers. Because mobile data services offered by a cellular operator would likely be subject to regulation as a commercial mobile service, comparable services provided by RAM Mobile Data should be

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<sup>12/</sup> Notice at ¶ 36.

<sup>13/</sup> Notice at ¶ 38 n.50.

<sup>14/</sup> See Lindstrom, Wireless Data Options on the Rise, Communications Week, Aug. 30, 1993.

considered the functional equivalent of such services. The mere fact that the RAM Mobile Data system is not connected to the public switched network is an insufficient reason to give it more favorable regulatory treatment than competing systems. Such a result would be inconsistent with the congressional intent to achieve regulatory parity among services that are substantially similar.

C. The Commission Should Continue its  
Existing Treatment of Mobile Satellite Services.

Under its existing regulations, the Commission may authorize a domestic satellite licensee to offer system capacity on a private carrier basis. If service is offered directly to end users, either directly or by resale, it must be offered on a common carrier basis. Vanguard agrees with the Commission's determination that its existing procedures for mobile satellite services should be continued.<sup>15/</sup>

IV. THE COMMISSION MUST INSURE THAT EQUIVALENT CELLULAR AND PCS  
SERVICES ARE SUBJECT TO THE SAME REGULATORY REQUIREMENTS

As the Commission found in establishing regulations for new Personal Communications Services, it is likely that PCS and cellular carriers "will compete on price and quality."<sup>16/</sup> Vanguard believes that such competition is inevitable because PCS carriers will be seeking to serve many of the same markets currently served by

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<sup>15/</sup> Notice at ¶ 43.

<sup>16/</sup> Notice of Proposed Rule Making and Tentative Decision, Amendment of the Commission's Rules to Establish New Personal Communications Services, 7 FCC Rcd 5676, 5701 (1992); Second Report and Order, In the Matter of Amendment of the Commission's Rules to Establish New Personal Communications Services, GEN Docket No. 90-314 (FCC 93-451), adopted September 23, 1993, released October 22, 1993 (the "PCS Order"), at ¶¶ 97 and 105.

cellular licensees. In addition, the types of services expected to be provided by initial PCS licensees, "advanced forms of cellular telephone service, advanced digital cordless telephone service, portable facsimile services, wireless PBX services and wireless local area network (LAN) services," all appear to fall within the statutory definition of "commercial mobile service."<sup>17/</sup> To guarantee, as the Budget Act requires, that there is a level playing field for cellular-PCS competition, Vanguard urges the Commission to classify PCS as commercial mobile service, at least during the initial stages of PCS licensing.

The Commission's proposal to allow a PCS licensee the choice to provide commercial mobile service, private mobile service, or both raises substantial practical concerns about the Commission's ability to implement and enforce regulatory oversight of a "hybrid" carrier. For example, the different filing procedures and fees for common and private carrier services would increase significantly the time required to process applications for hybrid services and thereby further strain the Commission's already limited resources. In addition, if Commission approval is required before carriers could change the nature of their services, additional Commission resources would be needed to implement this process. While the Commission could avoid these additional regulatory requirements by allowing a PCS licensee to change its regulatory status unilaterally, such an approach offers the

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<sup>17/</sup> PCS Order at ¶ 22.

potential for abuse and could undermine the Budget Act's requirement for regulatory parity.

In view of these substantial practical concerns, Vanguard urges the Commission to adopt initially a consistent regulatory regime for all PCS services. If, following the licensing and initial development of PCS, the Commission finds that a uniform regulatory framework inhibits service diversity, it could revisit this approach in a subsequent rule making, or, in a particularly compelling situation, adopt a different regulatory framework on a waiver basis. Regardless of how the Commission finally proceeds on this important issue, it is essential to fair competition that the fundamental regulation of cellular carriers and PCS providers be the same. Thus, if the Commission decides to pursue a flexible approach for PCS regulation, then cellular carriers should enjoy the same flexibility.

**V. ROBUST COMPETITION IN THE MOBILE COMMUNICATIONS  
SERVICE INDUSTRY JUSTIFIES REGULATORY FORBEARANCE**

The Budget Act authorizes the Commission to determine whether commercial mobile services or providers should be exempt from the provisions of Title II other than Sections 201, 202 and 208.<sup>18/</sup> The vigorous competition that exists in today's mobile communications marketplace, and the added competition that will soon result from the introduction of PCS services, guarantee that cellular carriers lack the market power to control prices or discriminate unreasonably in providing their services.

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<sup>18/</sup> 47 U.S.C. §§ 332(c)(1)(A), 332(c)(1)(C).

As an experienced provider of cellular communications services in 22 markets, Vanguard has experienced firsthand the robust competition that exists in the mobile communications industry. In each of its markets, Vanguard not only competes against the other cellular carrier but also faces competition from SMR providers, several of whom are aggressively pursuing the provision of cellular-like services, paging companies, providers of mobile data services and others. Moreover, as the Commission recognizes, this existing level of competition will substantially increase upon the licensing of up to seven new PCS providers in Vanguard's market areas.<sup>19/</sup> In addition, superfluous regulatory requirements increase the cost of providing services and limit a carrier's flexibility in responding to customers' needs. For these reasons, Vanguard endorses exempting cellular carriers from the tariffing and other requirements set forth in Title II to the fullest extent permitted by the Budget Act.

VI. INTERCONNECTION REQUIREMENTS APPLICABLE  
TO COMMERCIAL MOBILE SERVICE PROVIDERS

The Commission requests comment on the obligations of commercial mobile service companies to provide interconnection to other mobile service providers.<sup>20/</sup> In today's mobile communications marketplace, different services generally operate independently and infrastructure interconnection of such services is uncommon. However, as mobile communications services continue to evolve, it is conceivable

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<sup>19/</sup> Notice at ¶¶ 62 and 63.

<sup>20/</sup> Notice at ¶ 71.

that the public interest would be served by the physical interconnection of different services.

For example, it is possible that certain PCS providers, particularly those that will provide highly specialized services for narrow user groups, will seek to interconnect their systems to the established systems of the cellular operators in their market areas. Vanguard would support such a development provided that the cellular operator's obligation is limited to providing the type of interconnection reasonably necessary to permit the termination of communications traffic on its network. Vanguard believes that the public interest would not be served, however, if this "interconnection" obligation was exploited by licensees of new or developing services as a substitute for the prompt construction and implementation of their own independent networks. If a provider of new mobile services were permitted to arrogate a cellular carrier's network to help expand the capacity or geographic reach of its developing system, the level of service provided by the cellular carrier to its customers could suffer. In addition, the substantial increase in system usage would require an immediate and substantial increase in cellular system capacity. The increased capacity likely could not be achieved without significant, unplanned capital expenditures which, in turn, would likely require the cellular carrier to increase its subscriber rates.

Permitting developing mobile service companies to utilize existing networks in such a manner would also jeopardize the prompt introduction of new, competing

mobile services. The Commission faced a similar issue when it examined the application of its resale policy to a cellular carrier's obligation to provide resale capacity to its facilities-based competitor.<sup>21/</sup> In the Cellular Resale Order, the Commission found that a cellular carrier should not be required to provide resale capacity to its competitor once the competitor's system is fully operational. The Commission indicated that the termination of the resale requirement:

(1) promotes the maximum amount of competition between the two facilities-based carriers in the market; (2) promotes the Commission's goal of establishing nationwide availability of cellular service by encouraging carriers to build out their systems; (3) encourages the fullest possible utilization of the radio spectrum allocated to cellular service; and (4) discourages the carrier requesting resale from its competitor from permanently relying on its competitor's facilities and efforts.<sup>22/</sup>

Vanguard submits that these observations are equally applicable to the development of new mobile services. For these reasons, Vanguard maintains that to the extent commercial mobile service providers are required to offer interconnection to other providers of mobile services, the Commission must make it clear that such interconnection will be for the limited purpose of permitting the termination of messages on the existing carrier's network.

The Notice also seeks comment on the interconnection rights that should be afforded to commercial mobile service providers. Finding no distinction between the previously-established interconnection rights of Part 22 licensees and those that should

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21/ Report and Order, Cellular Resale Policy, 7 FCC Rcd 4006 (1992) (the "Cellular Resale Order").

22/ Cellular Resale Order at 4007.

apply to commercial mobile service providers, the Commission tentatively concludes that like interconnection standards should apply in both contexts. Specifically, the Commission requires local exchange carriers (LECs) to provide the type of interconnection reasonably requested by all Part 22 licensees. In the case of cellular carriers, the Commission has found that separate interconnection arrangements for interstate and intrastate services are not feasible, i.e., the provision of interstate and intrastate interconnection for cellular services is inseverable. The Commission therefore exerted plenary jurisdiction over the physical plant used in the interconnection of cellular carriers. However, since the Commission found that the underlying costs of interconnection are severable, it adopted a dual federal-state jurisdiction with regard to interconnection rates.

Vanguard supports the Commission's proposal to preempt state regulation of the right to intrastate interconnection and the right to specify the type of interconnection. Commercial mobile service providers should be treated no differently than existing Part 22 licensees for purposes of regulating physical interconnection to the local exchange. Vanguard agrees that LEC provision of interstate and intrastate interconnection of commercial mobile services, as well as the type of interconnection the LEC provides, should be found inseverable. Thus, the preemption of state regulation in these areas is appropriate for the same reasons that states are precluded from regulating physical interconnection for Part 22 licensees. Commercial mobile services will not, as a practical matter, be limited by state

boundaries, and there is a strong federal interest in encouraging the development of interstate and nationwide commercial mobile service networks. Thus, regulation of physical interconnection solely at the federal level is entirely consistent with the Commission's existing interconnection policies.

The regulation of rates for commercial mobile service providers to interconnect to the local exchange should be treated no differently than for existing Part 22 licensees. As the Commission is aware, a dual jurisdictional framework for interconnection rates has not always provided optimum results from the perspective of cellular carriers and consumers. However, to the extent interconnection rates for existing cellular and other mobile service carriers are regulated by states, the same jurisdictional treatment should apply in the case of new commercial mobile services so that regulatory parity may be maintained. In other words, there is no basis for differentiating between the regulatory framework that applies to Part 22 licensees and that which will apply to new commercial mobile services.

As noted previously, commercial mobile service providers should be required to provide interconnection to other mobile service providers subject to the specific limitations discussed above. Insofar as interconnection rates between commercial mobile service providers are concerned, Vanguard does not believe that Section 332(c)(3) of the Communications Act intended to preempt state regulation in this area. The language and context of Section 332(c)(3) make clear that it applies to end user rates, but it does not specifically address interconnection arrangements between